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DATE MAILED: 05/31/2002

FIRST NAMED INVENTOR ATTORNEY DOCKET NO. CONFIRMATION NO. APPLICATION NO. FILING DATE 09/869,475 6235-59221 4309 10/10/2001 Ryuichi Morishita 05/31/2002 KLARQUIST SPARKMAN, LLP EXAMINER 121 SW SALMON STREET WHITEMAN, BRIAN A **SUITE 1600** PORTLAND, OR 97204 PAPER NUMBER ART UNIT 1635

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)
Office Action Summary		09/869,475	MORISHITA ET AL.
		Examiner	Art Unit
		Brian Whiteman	1635
The MAILING DATE of this communication appears on the cover sheet with the correspondence address			
Period for Reply			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).  - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).			
Status	Decreasive to communication(a) filed on 20	May 2002	
1)[	Responsive to communication(s) filed on <u>28</u>		
2a)	,	nis action is non-final.	procedution as to the marite is
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.			
Dispositi	on of Claims		
4) Claim(s) 1-21 is/are pending in the application.			
4a) Of the above claim(s) is/are withdrawn from consideration.			
5)	Claim(s) is/are allowed.		
6)	6) Claim(s) is/are rejected.		
7)	Claim(s) is/are objected to.		
8) Claim(s) <u>1-21</u> are subject to restriction and/or election requirement.			
Application Papers			
9) The specification is objected to by the Examiner.			
10) The drawing(s) filed on 10 October 2001 is/are: a) accepted or b) objected to by the Examiner.			
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner.			
If approved, corrected drawings are required in reply to this Office action.			
12) The oath or declaration is objected to by the Examiner.			
Priority under 35 U.S.C. §§ 119 and 120			
13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).			
a) All b) Some * c) None of:			
a)⊠ All b)⊡ Some c)⊡ None of.  1.⊠ Certified copies of the priority documents have been received.			
			ation No
<ul><li>2. Certified copies of the priority documents have been received in Application No</li><li>3. Copies of the certified copies of the priority documents have been received in this National Stage</li></ul>			
application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.			
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).			
<ul> <li>a) ☐ The translation of the foreign language provisional application has been received.</li> <li>15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.</li> </ul>			
Attachment(s)			
2) Notice	ce of References Cited (PTO-892) ce of Draftsperson's Patent Drawing Review (PTO-948) mation Disclosure Statement(s) (PTO-1449) Paper No(s)	5) Notice of Informa	ary (PTO-413) Paper No(s) al Patent Application (PTO-152)
JS Patent and 1	Frademark Office		

Application/Control Number: 09/869,475

Art Unit: 1635

## **DETAILED ACTION**

Claims 1-21 are pending

## Election/Restrictions

A telephone call was made to Dr. William Noonan on 5/28/02 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

- (a) diabetic lower limb ischemic disease,
- (b) diabetic ischemic neuropathy; and
- (c) diabetic ischemic myocardial infarction.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the

Application/Control Number: 09/869,475

Art Unit: 1635

limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

Claims 1, 3, 4, 9, 11, 12, 17, 18, 19 and claims dependent therefrom correspond to the species of (a).

Claims 1, 3, 9, 11, 17, 18, and claims dependent therefrom correspond to the species of (b).

Claims 1, 3, 9, 11, 17, 18 and claims dependent therefrom correspond to the species of (c).

The following claim(s) are generic: claims 1, 9, and 17.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: the species of (a)-(c) are different structurally and/or functionally with regard to their site of action, and the PCR Rules for Lack of Unity do not apply.

It would be unduly burdensome for the examiner to search and consider patentability of all of the presently pending claims, a restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

Application/Control Number: 09/869,475

Art Unit: 1635

application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 § 1.17(h).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kay Pinkney whose telephone number is (703) 305-3553.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Whiteman whose telephone number is (703) 305-0775. The examiner can normally be reached on Monday through Friday from 8:00 to 5:00 (Eastern Standard Time), with alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's mentor, primary examiner, Dave Nguyen can be reached at (703) 305-2024.

If attempts to reach the primary examiner by telephone are unsuccessful, the examiner's supervisor, John L. LeGuyader, SPE - Art Unit 1635, can be reached at (703) 308-0447.

Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center number is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

DAVET. NGUYEN PRIMARY EXAMINER

Brian Whiteman 1635 5/29/02